

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>BERNARD THOMAS</b>	:	
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under the Administrative Code of the City of New York for the Year 1995.	:	DETERMINATION DTA NO. 817135

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Petitioner, Bernard Thomas, 708 Linwood Street, Brooklyn, New York 11208, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under the Administrative Code of the City of New York for the year 1995.

On September 27, 1999 and October 21, 1999, respectively, petitioner and the Division of Taxation by Barbara G. Billet, Esq. (Kevin R. Law, Esq., of counsel), waived a hearing and agreed to submit this case for determination, with all documents and briefs to be submitted by March 6, 2000, which date began the six-month period for the issuance of this determination. After due consideration of the record, Frank W. Barrie, Administrative Law Judge, renders the following determination.

***ISSUES***

I. Whether wages received by petitioner were properly held subject to New York State and New York City personal income tax.

II. Whether petitioner's position in this proceeding is frivolous so that a penalty should be imposed against him.

***FINDINGS OF FACT***

1. During 1995, petitioner, Bernard Thomas, received wages from the New York City Transit Authority of \$42,848.15. His wage and tax statement (Form W-2) for 1995 shows that New York State income tax of \$2,697.66 and New York City income tax of \$1,514.86 were withheld from his wages.

2. On his New York State and City resident income tax return for 1995, petitioner claimed an overpayment of income tax of \$4,212.52, representing the total of the New York State income tax withheld of \$2,697.66 plus the New York City income tax withheld of \$1,514.86. On his 1995 tax return, petitioner sought a refund of \$4,212.52.

3. The Division of Taxation ("Division") issued a Statement of Proposed Audit Changes dated August 15, 1996 against petitioner asserting additional New York City personal income tax due for 1995 of \$26.00 while crediting petitioner for the overpayment of New York State personal income tax in the amount of \$2.00. This minor adjustment was based on the following computation:

Wages	\$42,848.00		
Taxable interest income	539.00		
414 H	2,390.00		
IRC H	<u>127.00</u>		
Total New York income	\$45,904.00		
New York standard deduction	( <u>6,600.00</u> )		
New York taxable income	\$39,304.00		
	<u>NY State</u>	<u>NY City</u>	<u>Net</u>
Tax on New York taxable income	\$2,696.00	\$1,541.00	
New York tax withheld	(2,698.00)	(1,515.00)	
Personal income tax due	\$ (2.00)	\$ 26.00	\$24.00

This Statement of Proposed Audit Changes also rejected petitioner's claim for refund of tax withheld with the following explanation:

The arguments that you are not subject to Income Tax have been addressed in the Federal Tax Court and Federal Appeals Court time and time again. The results have been that such arguments were considered frivolous and without merit. New York State also regards these arguments in the same manner.

4. The Division then issued a Notice of Deficiency dated April 7, 1997 against petitioner asserting additional tax due of \$24.00 plus interest.

5. Petitioner responded by filing a request for a conciliation conference before the Bureau of Conciliation and Mediation Services and a conciliation conference was conducted at petitioner's request. By a conciliation order dated February 26, 1999, petitioner's request was denied by the conciliation conferee. Petitioner's response was to file a petition dated May 16, 1999 in which he asserted the proposition that the 16<sup>th</sup> Amendment to the United States Constitution does not treat income as "the subject of the tax [but] is the basis for determining the amount of the tax." He also referenced certain rules for construing statutes dealing with taxation as set forth in McKinney's Consolidated Laws of NY, Book 1, Statutes.

6. By its answer dated July 29, 1999, the Division sought the imposition of the maximum penalty for filing a frivolous petition pursuant to 20 NYCRR 3000.21.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 612(a)<sup>1</sup> provides that:

The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year . . . .

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<sup>1</sup> The New York City personal income tax imposed by Chapter 46, Title T of the Administrative Code is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law.

B. Federal adjusted gross income includes wages and salaries. Petitioner's reliance on the Sixteenth Amendment to the Constitution of the United States to the contrary is completely without merit. The Sixteenth Amendment provides as follows:

The Congress shall have power to lay and collect taxes on incomes, *from whatever source derived*, without apportionment among the several States, and without regard to any census or enumeration (emphasis added).

Petitioner's esoteric proposition, boldly asserted in the year 2000, that a taxpayer's income may not be the subject of the income tax but rather may only be the subject of an excise tax is gibberish (*cf.*, ***United States v. Gerads***, 999 F2d 1255, *cert denied* 510 US 1193, 127 L Ed 2d 652, 114 S Ct 1300; ***Parker v. Commr***, 724 F2d 469, 84-1 US Tax Cas ¶ 9209 [wherein the Federal Court of Appeals (5th Cir), affirming a Tax Court decision, noted that the Sixteenth Amendment empowered Congress to levy income tax against any source of income, without any need to classify it as excise tax applicable to specific categories of activities, an explicit rejection of petitioner's esoteric proposition]) .

C. Further, petitioner's contention that his petition should be granted because the Division of Taxation refunded income taxes that had been withheld from his wages for 1998 also lacks merit. The fact that the Division might have erroneously refunded such withheld taxes for 1998 does not have any relevance to the matter at hand. Finally, petitioner's incoherent references to certain statutory rules of construction are of no import.

D. At 20 NYCRR 3000.21(a), the regulations of the Tax Appeals Tribunal treat a taxpayer's position that wages are not taxable as income as "frivolous" for purposes of the imposition of a penalty for the filing of a frivolous petition under Tax Law § 2018.

Consequently, a penalty of \$500.00 is hereby imposed against petitioner on the grounds that

petitioner's position in this proceeding is frivolous (*cf.*, *Matter of Lang*, Tax Appeals Tribunal, July 8, 1993).

E. The petition of Bernard Thomas is denied, the Notice of Deficiency dated April 7, 1997 is sustained, and a penalty of \$500.00 is imposed against petitioner for filing a frivolous petition.

DATED: Troy, New York  
July 06, 2000

/s/ Frank W. Barrie  
ADMINISTRATIVE LAW JUDGE